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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,118	11/19/2003	Kevin Krietemeyer	12406/79	9903
26646	7590	07/26/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			FERNSTROM, KURT	
			ART UNIT	PAPER NUMBER
			3712	
DATE MAILED: 07/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/718,118

Applicant(s)

KRIETEMEYER, KEVIN

Examiner

Kurt Fernstrom

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/19/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 5, 8, 11-12 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims contain several examples of "to" language, which makes it unclear whether the subsequent claim language is intended to be a positively recited limitation or an intended purpose. For example, claim 3 recites that a pick "is to include one or more randomly selected numbers." From this, it is not clear whether each pick actually does include such numbers, or whether it is merely intended to. Claims 5, 8, 11, 17, 18 and 20 contain similar language. Also, claims 17-20 recite the limitation "the gaming slip". There is insufficient antecedent basis for this limitation in the claim, as a gaming slip was never positively recited as part of the claimed invention.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 8-10, 13, 16, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Jarvis. Jarvis discloses in Figures 1 and 2 and in column 2, line 24 to column 3, line 18 of the specification a method and device of playing a lottery

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comprising a gaming slip 12 comprising a substrate having gaming information printed thereon, including a random request region 26 that enables a plurality of computer-generated picks to be requested in conjunction with a lottery. Column 3, lines 3-17 in particular discusses the use of a computer to generate picks when a random request is received. With respect to claims 3 and 13, column 3, lines 3-17 further discusses the selection of six numbers when a random request is received. With respect to claims 4 and 8, Jarvis discloses that a manual selection region 14 including one or more manually selected numbers is provided which enables a manual pick to be made. With respect to claim 4, Jarvis discloses that a draw request region 22 is provided which enables picks to be played for a plurality of drawings. With respect to claims 17 and 20, a machine readable medium as claimed is inherent in the disclosure of Jarvis, in particular that portion which discusses the use of a computer to generate random numbers in response to a random request. It should also be noted that claim 17 recites a machine readable medium **to store** a set of instructions. By reciting the invention as an intended purpose, rather than a positive limitation, in strict terms any computer readable medium reads on claim 17, and thus claims 18-20, as written.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 2, 6, 7, 11, 12, 14, 15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarvis in view of Mullins. Jarvis discloses all of the limitations of the claims with the exception of the different types of games provided on the gaming slip. Providing a single gaming slip with multiple types of games thereon is known, as disclosed for example by Figures 1-3 of Mullins. It would have been obvious to one of ordinary skill in the relevant art to modify the method and device of Jarvis by providing different types of games on the slip for the purpose of allowing a user to easily participate in the different games., particularly given that Jarvis discloses a plurality of random request regions and manual request regions on its gaming slip. With respect to claims 15 and 19, tracking gaming data is inherent in the method of Jarvis, given that a computer is used to generate and store random numbers in response to a random request. Storing such numbers amounts to tracking the numbers, and thus game data. It should be noted with respect to these claims that "track" and "based on each type of game played" are both instances of very broad claim language, and have been examined under their broadest reasonable interpretation.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Walker, Congello, Boylan, Casa, Sludikoff and Alvarez disclose various devices and methods involving lottery gaming slips. Sullivan discloses a method of tracking game data from a lottery.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF
July 22, 2004

Kurt Fernstrom
Kurt Fernstrom

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